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July 20, 1959

MEMORANDUM FOR THE SECRETARY

FROM : L - Mr. Becker

SUBJECT: Gromyko statement re status of Western Powers' rights following interim period. Ref. SECTO 352, July 18, 1959, page 2.

1. In this statement Gromyko makes explicit for the first time what he had implied in June: that the Soviet Union would not take any unilateral action either during the interim arrangement or during negotiations following such arrangement.

2. Gromyko continues to insist that no reference to "rights" as such will be made in the paper expressing the terms of the interim arrangement. Although it was not expressly stated in this talk, there are indications that Gromyko would also be opposed to unilateral statements concerning rights.

3. Gromyko is clearly reserving to the Soviet Union the right to assert at the conclusion of any negotiations following the interim arrangement (and particularly in the event that they break down) that the existing rights of the Western Powers have become void. Such assertion would probably be based on two closely related grounds. First, that by their very nature, occupation rights are temporary in character and become eroded with time. Second, that any consideration of the validity of occupation rights must be done in the context of the facts as developed since the occupation began. Here the Soviets rely upon the establishment of the German Federal Republic by the Western Powers and the German Democratic Republic by the Soviet Union. On these two bases the Soviets would rest their contention that a unilateral peace treaty between the Soviet Union and the German Democratic Republic would be sufficient after the interim arrangement and subsequent negotiations to wipe out the occupation rights of the Western Powers, including their right to free and unrestricted access to Berlin.

4. Legally, a failure to mention the occupation rights in the document specifying the interim arrangement would not be in derogation of the rights. The Soviets have dropped their previous position that such rights have expired with time, and have several times explicitly conceded their existing validity. Accordingly, there is no question in my mind but that under the

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arrangement

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arrangement proposed by Gromyko, the rights would continue unimpaired through the period of the interim arrangement and subsequent negotiations.

5. Gromyko's formulation leaves some question as to whether he is prepared to give a formal commitment against unilateral action by the Soviet Union during the period of the interim arrangement and subsequent negotiations. In speaking of that, he said he was talking "as Foreign Minister talking to Foreign Minister." "This was as far as he was authorized to go." This sounds like a person to person "gentleman's understanding" which, in the Soviet book, is worth even less than their signed agreements.

6. Assuming some adequate assurance could be obtained to the effect that the Soviets would not act unilaterally during the interim period, including the subsequent negotiating period, the rights would continue to be valid during this period as I have noted above, but it must be confessed that our legal position would, as a practical matter, be weaker at the end of another two and one-half years of occupation. Strictly and technically speaking, our rights are subject to change only by Four-Power agreement. Nevertheless, even a court, in my opinion, would in examining this question take account of the passage of time and the new situations which have arisen.

7. My conclusion is that while Gromyko's proposal would give us a breathing spell in which we might improve our military and political position, acceptance of it would mean that we might well be faced, in two and one-half years plus, with negotiations even more difficult from the legal point of view than those in which we are now engaged. In expressing the foregoing views, I have not taken into account the JCS's views as to our strategic position vis-a-vis the Soviet Union in another two and one-half years, nor have I attempted to evaluate public reaction in the event that we accept a time limit under the conditions set out by Gromyko.

Copies to:

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